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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,190	09/29/2000	Stephen F. Gass	SDT 316	9029
27630	7590	06/30/2004	EXAMINER	
SD3, LLC 22409 S.W. NEWLAND ROAD WILSONVILLE, OR 97070			ASHLEY, BOYER DOLINGER	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 06/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/676,190	GASS, STEPHEN F.	
	Examiner	Art Unit	
	Boyer D. Ashley	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 31 March 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 21-35 is/are pending in the application.
- 4a) Of the above claim(s) 21-24, 28 and 35 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 25-27 and 29-34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/4/04, 2/12/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input checked="" type="checkbox"/> Other: <u>IDS -1449 dated 4/17/04</u> . |

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DETAILED ACTION

1. This office action is in response to applicant's amendment filed 3/31/04, wherein claims 25-27, 29, 30-32 and 34 were amended. Claims 21-35 remain pending in the instant application with claims 21-24, 28 and 35 remain withdrawn from consideration as being drawn to a non-elected invention without traverse.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 25-27, 29-31, and 34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 20 of copending Application No. 10/051,782. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, i.e. the claims of 10/051,782 anticipate the claims of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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4. Claim 31 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-15 and 19-20 of copending Application No. 10/052,806. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, i.e. the claims of 10/052,086 anticipate the claims of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 25-27 and 29-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-24 of copending Application No. 10/052,273. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, i.e. the claims of 10/052,273 anticipate the claims of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 25-27 and 29-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/643,296. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, i.e. the claims of 10/643,296 anticipate the claims of the instant application.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 25-27 and 29-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 09/929,242. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, i.e. the claims of 09/929,242 anticipate the claims of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 25-27 and 29-31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 and 26-29 of copending Application No. 09/929,238. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ only in the claim terminology used but encompass the same subject matter, i.e. the claims of 109/929,238 anticipate the claims of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 27 and 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boston et al. or Meredith in view of Lokey and Friemann et al., U.S. Patent 3,858,095, or Yoneda, U.S. Patent 4,117,752, and Terauchi.

Boston et al. and Meredith et al. both disclose the invention substantially as claimed except for the detection system and the brake system; but includes, e.g., a base (16), a work surface (18/20), rotatable blade (36), a motor (34), a pivot joint (30), and a support arm (28).

The detection system is configured to detect a dangerous condition between a person and the blade. The brake system engages the blade upon detection of the dangerous condition and configured to use at least part of the angular momentum of the blade to generate a force tending to urge the axis of the blade away from the work surface.

Lokey discloses that it is old and well known in the art to use detection and braking system for the purpose of preventing injury to a user. The braking system of Lokey also includes pawls to engage the blade. Friemann et al. and Yoneda both discloses that it is old and well known in the art to use braking systems with cutting tools that react upon contact between a user and the blade for the purpose of preventing injury to a user. Terauchi discloses that it is old and well known in the art to use safety systems that includes immediate stopping of the blade or retraction of the a blade when the blade contacts a workpiece holder for the purpose of preventing damage or further damage to the workpiece holder.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a detection system and a braking system, as taught by Lokey, Friemann et al., Yoneda and Terauchi with the devices of Boston et al. or Meredith et al. such that the blade is urged away from the work surface upon detection of contact between the user and the blade in order to prevent injury to the user by retracting the blade upon detection of a dangerous condition.

As to claims 30 and 34, the modified devices of Boston et al. and Meredith et al. are also adapted to stop the rotation of the blade.

As to claim 31, the modified devices of Boston et al. and Meredith et al. limit the movement of the blade into the work zone by retracting the blade upon detection of the contact.

As to claim 32, the modified devices of Boston et al. and Meredith et al. disclose the use of braking pawls to engage the blade.

As to claim 33, the modified devices of Boston et al. and Meredith et al. both disclose the invention substantially as claimed except for the specific location of the brake relative to the pivot joint. However, Lokey discloses that it is old and well known in the art to use brakes on the front of a blade, with counterclockwise rotation of the blade as seen in Figure 1, wherein the brake on the opposite side of the pivot arm. In this case, the pivot arm would be the arm of user. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a brake on the front side of the modified devices of Boston et al. and Meredith et al. if the blade of modified device rotated in the clockwise direction in order to positively engage

the blade to prevent further movement of the blade by having the blade facilitate movement of the brake pawls into the blade to bind the blade with brake.

Response to Amendment

11. The Declaration under 37 CFR 1.132 filed 3/31/04 is insufficient to overcome the rejection of claims 25-27 and 29-34 based upon Boston et al., U.S. Patent 5,285,708, or Meredith, U.S. Patent 5,724,875, in view of Lokey, U.S. Patent 3,785,230, and Terauchi, U.S. Patent 4,512,224, as set forth in the last office action because it stills does not set forth facts germane to the instant claims. More specifically, applicant's comments are only directed to the tests he allegedly completed and how the combination of the references would not be able to perform the function of the urging the blade away from the cutting area.

Applicant's further explanations are appreciated however, the examiner still believes that the declarations are lacking. Although, applicant's declaration may explain how the combined references would react if modified the declaration still does not provide any facts as to the specific combination, e.g., the location of the brake during the tests. The declaration only gives applicant's opinion and interpretation of the alleged test perform and combination. It is still not clear if the alleged tests are commensurate with the combined references. For example, it appears that the test using the DeWalt miter saw had a motor brake instead of a brake that engaged the blade.

Regardless, the declarations do not explain the differences, in terms of structure, between the combination of references and that of the instant application claims that

allow for the blade to be urged away. How is the modified device any different from that of the instant claims? The examiner was looking for an explanation as to how the tested devices were structurally different from the instant invention as well as how the structural differences allowed for the blade to be urged away.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

It should be noted that regardless of the declarations the examiner agrees with applicant's comment found on pages 11-14, with regard to the rejection of claim 25. More specifically, the applied prior art references fail to disclose or suggest a reaction system that includes a brake for decelerating the blade as well as for using a fraction of the angular momentum of the blade to generate a force tending to urge the axis around with the blade rotates away from the work surface when the brake decelerates the blade. Terauchi teaches using a motor to return the blade instant of using the angular momentum created by rotation blade. It is believed that the previous rejection was lacking because it failed to disclose any teaching of angular momentum to urge the blade away from the cutting zone.

Applicant contends that the previously applied references lack a detection system adapted to detect contact between a person and the blade"; however, it should be noted that this phrase is not limited to any specific physical touching between the user and the blade. The "contact" could be contact of the user within a proximity of the

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blade. The broadest reasonable interpretation of the phrase, more specifically the term "contact" is the state of immediate proximity.

13. For the reasons above, the grounds of rejection are deemed proper.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 703-308-1845. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Boyer D. Ashley
Boyer D. Ashley
Primary Examiner
Art Unit 3724

BDA
June 26, 2004